TESTIMONY STATEMENT of MICHAEL B. COX

MARCH 15, 2002 - DRAFT

Many Imperial Valley farmers, like myself, feel as if we are pawns in a giant chess match. Forces outside our control are moving us at will, sometimes with the intent of sacrificing us for a future gain, as part of an overall strategy. The chess game is water for California and there are many advisors, analysts, and interested parties waiting for the results.

I am a third generation farmer in Imperial County. My grandfather and father moved their farm from the Long Beach, California area in 1952 and relocated to the Brawley/ Calipatria area to grow cotton, barley, flax, alfalfa and sugar beets. I began farming in 1972 after graduating from Cal Poly, San Luis Obispo with a B.S. degree in Farm Management. I have farmed continuously here since then, leasing and farming about 1,100 acres of diversified field crops; primarily cotton, alfalfa, sugar beets, wheat, fresh market tomatoes and onions for seed and for processing.

I have been active in farm organizations such as Farm Bureau, Calcot, California Beet Growers Association, Western Growers Association and others. I am currently one of five directors for the Imperial County Cotton Pest Abatement District, and the President of the Imperial County Farm Bureau.

For most of the last thirty years I have closely followed the water policies of the Imperial Irrigation District, particularly in regards to drainage. I have been a lessee for this period on the same 960 acre farm where I started farming in 1972. This farm is just east of the New River at its entry to the Salton Sea. I was a close witness to the rising elevation of the Salton Sea and a minor victim to the flooding of the New River in 1976 from Tropical Storm Kathleen and in 1977 from Tropical Storm Doreen. As the sea rose further in subsequent years, both from increased runoff and higher than average rainfall, my landlords and other owners of property adjacent to the Sea were forced to build dikes to keep the Salton Sea off their farmland. Lift pumps had to be installed for both the underground tile drainage and for surface runoff. These pumps were limited in capacity and most were electrically driven and subject to outages during storms or birds shorting out the lines. This reduction of or interruption of outflow was damaging to crops at the lower areas of those fields.

I became an advocate for stricter limits on drainwater. It was very costly to the IID to pay for dike construction, pump installation and the maintenance of both, plus the legal costs associated with lawsuits arising from damages caused by flooding. I supported the IID wastewater assessment program (or triple charge). I was also aware of challenges to our reasonable and beneficial use of water.

As a result of the adoption of Order WR 88-20 by the State Water Resources Control Board (SWRCB), the IID entered into a conservation agreement (MWD 1) with the

Metropolitan Water District to conserve about 100,000 acre feet annually. A combination of projects have been installed and implemented as part of this effort. I have leased fields that were on an intercepted lateral (a type of conservation project) so I was able to have the water delivery shut off earlier than normal to cut runoff. This was a very workable option to reduce fresh water usage or reduce unneeded tail-water. I must emphasize that on most fields, as laid out in the IID, some tail-water is required to provide the opportunity time needed to adequately irrigate the lower ends of our fields. This is to properly sub moisture into the bed tops for shallow-rooted crops like onions and to provide deep moisture for deep-rooted crops such as sugar beets, cotton or alfalfa, and to leach out salts from the soil.

Another project built under the auspices of the MWD 1 conservation agreement was the Trifolium Interceptor and the Willey Reservoir. This captures extra water turned back into the Trifolium laterals and other canals north of Westmorland, collects it by gravity flow into Willey Reservoir, then pumps it across the New River and east three and one half miles into the Vail Canal to supply part of the irrigation water for over 10,000 acres between the New River and Alamo River deltas. The net benefit of this project has been to allow farmers in the Westmorland area to better manage their drain water by early cut off of deliveries but, this project has also benefited those of us on the lower Vail laterals by providing an extra supply of water during times of high need, a better operational flow of water which buffers against surges in the supply of water at the bottom end of a long canal system, fewer days when water was "carried over" due to demand exceeding supply.

More system improvements such as these are imperative if IID farmers are to improve our efficiency and reduce our usage of water while maintaining our production.

I believe that **actual water users are the key** to improved on-farm efficiency, **not the landowner**. Most landowners in the Imperial Valley are not actually farming their land. Most are absentee and don't live in the Valley. Their primary interest is economic. They want a decent return on their investment with the maximum cash return. The absentee landowner would not be inclined to invest capital in a long term water conservation project such as level-basin, or permanent drip or even a large return flow system given no financial assistance upfront, and a strong chance that the transfer agreement could be cancelled due to untenable environmental liabilities. Their interests would be better served by not entering the transfer or by fallowing. If landowners are to be the targeted participants for this transfer, then the following items must be provided.

1. A funding mechanism so that **no long term debt** is required.
2. A **shorter term for the transfer**. The current wheeling agreement is for thirty years. Many of these water conservation methods have an operational life of twenty-five years or less.
3. **Indemnification against environmental damage claims** arising from the conservation and transfer of water is essential.

4. Remuneration based upon an **improvement in irrigation efficiency**, not just a reduction in the total amount of water used.

The IID has developed a twenty-one point tail-water reduction plan to decrease the surface runoff to the Salton Sea. The key component of the plan was a "triple charge" assessment if a drain flow exceeded a certain percentage of your delivered order. The intensity of the enforcement of this component has varied over the years as the political and legal pressures have changed. A wide variation in enforcement and compliance existed within the district. Some farmers have been very diligent in watching their tail-water, either because of tight monitoring of their runoff by their zanjero or because the aforementioned lift pumps restricted surface runoff. Some farmers diligently tried to reduce overall tail-water because they could see the impact on the flooding around the Salton Sea and understood the costs associated with that flooding. Those costs were funded by an increase in the charge for water. The legal and environmental document costs in drafting this proposed transfer have also been added to the cost of water. Current and past farm water users have footed the bill to get us to this point, not the landowners.

ALLOCATION TO HEAD GATE BASED ON HISTORICAL USE

A controversial cornerstone of the IID adopted policy for water conservation participant guidelines is to allocate water to each farm parcel or headgate based upon the historical usage of water recorded for that gate for the years 1987 to 1995, excluding the high and low years. The owners of many parcels will be injured by the adoption of this historical limitation

The following are four examples of lower water history for individual headgates.

1. If serious and intensive irrigation management was utilized to comply with the twenty-one point tail-water reduction plan, water usage for that parcel would have been lowered and a lower water history results, in effect **punishing the farmer who was more efficient in his use of water.**
2. The mandatory short season cotton program was in effect during the historical period, but has now been phased out. All cotton in the Imperial Valley had to be terminated by September 1 and plowed out by November 1. Prior to the short season program, regulations only called for a December 31 plowdown as is in effect under current regulations. Subsequently, the short season cotton was not irrigated after August 15. The full season cotton gets up to three more irrigations which could use an extra 1.25 acre feet per acre or 20% more water. Using only **this nine year history underallocates** by 20% what is needed for full term cotton on those parcels.
3. Set-aside requirements mandated fallow acreage to participate in the federal farm programs for cotton and wheat during all of these base years for historical water use (1987–1995). This required varying amounts of farmland to be set-aside or fallowed to receive price support payments. These

fluctuated year to year and the percentages for wheat and cotton varied and were flexible, but the bottom line is that **parcels enrolled in federal farm programs any year from 1987 to 1995 may have had all or part "set-aside" and thus have a lower history.** Set-aside is not used in the current farm bill so no acreage is left fallow in order to comply with the cotton or wheat provisions.

4. Certain parcels belonging to different owners share a common headgate and occasionally run concurrent heads of water or sequential orders where the first user finishes and then passes the water to the next user. If 26 hours are used by the first water user and 22 hours are used by the second water user, but each is charged 24 hours, then the history was off by almost 10%. **Imprecise measurements or billing** does add up over a nine year period.

VOLUNTARY or INVOLUNTARY

Because the Quantification Settlement Agreement (QSA) caps diversions by IID at 3.1 million acre feet, there are provisions for inadvertent overruns and paybacks. The IID baseline for payback has been announced as the average historical usage as described above. This would apply to both participants and non-participants. But, of course, non-participants would not be paid anything if they conserved to get under their baseline.

Also, it is unclear how much liability cost would be passed on to non-participants if the IID were to be sued and made to pay damages or costs as a result of this transfer.

FALLOWING

Fallowing for short periods of time is part of many farm plans. Even the Bible talks of leaving land idle every seventh year. Allowing the land to rest between crops or over a season or two has value in breaking disease, weed, and pest cycles. Not farming for a year or more allows the release of micronutrients in the soil due to natural breakdowns in the earth particles, increasing fertility. Also, ground fallowed can be improved when not farmed by leveling, tiling and leaching.

Land retirement does not take advantage of these benefits since it removes land from production for more than three years and causes it to lose its classification as prime farmland.

INDEMNIFICATION

According to testimony at the SWRCB 4.4 workshop, November 14, 2001, in Ontario, California, numerous spokespersons stated that this proposed transfer is the linchpin of the 4.4 Plan for California. It holds all the pieces together: QSA, ISA*, CVWD*, SDCWA, MWD and IID. But looming ominously in the background is the Salton Sea.

For farmers and landowners in the Imperial Irrigation District to be willing participants in this "voluntary" transfer, we **must** have indemnification from environmental liability. If we conserve water for transfer, then the recipients of the water should bear the burden for damages caused by that transfer, especially if they say the water must be the result of conservation and not fallowing. If MWD stands to lose 500,000 acre feet of "surplus" water due to the expiration or failure of the ISA, they should be forthcoming with guarantees of protection for transfer participants.

As stated in the March 11, 2002 letter from the Imperial County Farm Bureau to the SWRCB, **"It is essential that landowners and farmers within the Imperial Irrigation District not be held responsible and must be indemnified against any claims involving environmental, property, or personal damages arising from the Imperial Irrigation District's good-faith fulfillment of its contractual and legal obligations to conserve and transfer water pursuant to its agreement with San Diego County Water Authority, the QSA, and other related legal documents."**

*ISA – Interim Surplus Agreement
*CVWD – Coachella Valley Water District